

II. REMARKS

United States Serial No. 10/787,507 was filed on February 26, 2004. The originally filed application included claims 1-50.

In Applicants' Response to the Restriction Requirement filed on April 25, 2006, claims 1-32 were elected for examination in the present application.

Claims 1, 12, 15, 25 and 26 were amended and claim 2 was cancelled by Applicants' Response filed on September 27, 2006.

Claims 12 and 26 were amended and claims 33-50 were cancelled by the RCE Submission filed on May 7, 2007.

Claims 4, 10, 11, 18, 24 and 25 were cancelled.

In view of the amendments and remarks set forth herein, Applicants respectfully request reconsideration and allowance of claims 1, 3, 5-9, 12-17, 19-23 and 26-32.

35 U.S.C. §102(e)

Claims 1-3, 5-9, 12-17, 19-23 and 26-32 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2003/0127026 ("Anderson"). Anderson issued as USPN 6,787,507.

In the present Office Action, it is specifically alleged that the solids content and dosage ranges of Table A of Anderson anticipate the presently claimed ranges of components of the strength improvement admixture. Applicants respectfully traverse this rejection.

The presently claimed strength improvement admixture composition comprises about 5 to about 80% polycarboxylate dispersant, about 0.5 to about 40% set retarder, and about 0.5 to about 40% strength improvement additive, based on the total dry weight of the admixture composition.

Applicants will first address the “dosage range” allegation. The Anderson reference is directed to a composition of commercially available admixture materials, namely, polycarboxylate dispersants (GLENIUM), set accelerators (POZZOLITH and RHEOCRETE), and set retarders (DELVO). The dosage ranges provided in Table A simply represent recommended dosage ranges that are provided by the manufacturer for the separate admixture products that may be used across a wide variety of end applications and do not indicate a ratio of dispersant:accelerator:retarder. Thus, Table A does not refer to the dosage ratios for the polycarboxylate dispersant, set accelerator and set retarder present in the high early strength cementitious composition disclosed by Anderson. The amounts and ratio of the dispersant, accelerator and retarder are controlled by Paragraph [0156] of Anderson. Therefore, the general dosage range of Table is simply not relevant. Furthermore, the dosage ranges of Table A are reported as fluid ounces/100 lbs cement, while the weight percent of admixture components of Paragraph [0156] are reported at weight percent based on the total solid (dry) content of admixture components.

Furthermore, Applicants have submitted herewith the 132 Declaration of Joseph Daczko, a named inventor of the Anderson reference. In contrast to the presently pending independent claims, the Daczko Declaration confirms that Anderson expressly discloses “[T]he weight percentages of the components in the high early-strength composition of admixtures are preferably greater than 0% to about 2% retarder; about 5% to about 12% dispersant; and about 85% to about 95% accelerator based on solid (dry) content.” The Daczko Declaration also confirms that dosage ranges for polycarboxylate, set accelerator and set retarder do not in Table A of Anderson do not specify the weight percentage of each component in the composition of admixtures. Therefore, the general dosage ranges of Table A do not anticipate the currently pending claims.

Applicants will next address the “solids content” allegation. The Office Action alleges that Table A of Anderson teaches an admixture containing 20-30% polycarboxylate dispersant, 30-50% polyhydroxylalkylamine, and 10-20% set retarder. The Examiner has contended that “[W]hile the percentages in Table A are approximate solids content, the percentages are based on 100% of the solids content of the admixture components, as evidenced by the fact that when each component is maximized, the total adds up to 100. Simply put, this contention is not correct.

Anderson is directed to a high early-strength composition of admixtures. This composition of admixtures comprises a polycarboxylate dispersant, an accelerator and a set retarder. Anderson discloses that the dispersant, accelerator and set retarder are separate commercially available admixtures. Anderson discloses that suitable polycarboxylate dispersants are commercially available under the trademarks GLENIUM, ADVA, VISCOCRETE, or SUPLERFLUX, See Anderson at Page 3, Paragraph [0041]; that suitable set accelerators are commercially available under the trademarks POZZOLITH and RHEOCRETE, See Anderson at Page 7, Paragraph [0142]; and that suitable set retarders are commercially available under the trademark DELVO, See Anderson at Page 8, Paragraph [0156].

The ranges set forth in Table A of Anderson do not specify the weight percentage of the each component of the composition of admixtures, based on the total dry weight of the admixture composition. More exactly, the ranges set forth in Table A of Anderson actually represent the “approximate solids content” of each individual, commercially available admixture component, before the individual admixture components are added to the cementitious mixture. The approximate solids content of each commercially available component of the Anderson composition of admixtures, and the dosages of each component based on total dry weight of the presently claimed admixture are two entirely different and separate concepts.

By way of illustration, an approximate solids content of 30-50% for an accelerator means that the bottle of liquid accelerator itself contains 30-50% solids in the solution. Attached is page 1 of the Material Safety Data Sheet for POZZOLITH® NC534. It is a liquid that may contain 30-60% calcium nitrate and 1-5% sodium thiocyanate. Thus, a 100ml bottle of POZZOLITH NC534 contains from 31-65%

solids content. The range of 30-50% set forth in Table A does not identify an admixture containing 30-50% accelerator, but rather, a commercially available liquid accelerator component that contains 30-50% dissolved or dispersed solids.

Taking into the account the Daczko 132 Declaration submitted herewith, Applicants again offer a hypothetical composition of admixtures prepared in accordance with Paragraph [0156] of the Anderson reference and having the following composition:

2% retarder
12% dispersant
86% accelerator
100% total based on solids (dry) content

This hypothetical composition of admixtures is prepared from a commercially available liquid set retarder having a solids content of 20 percent (20g solids in 100ml solvent), a commercially available liquid dispersant having a solids content of 30 percent (30g solids in 100ml solvent), and a commercially available liquid set accelerator having a solids content of 50 percent (50g solids in 100 ml solvent).

One must use a 0.4 ml dose of the 20% retarder solution to provide 2% retarder one must use a 3.6ml dose of the 30% dispersant solution to provide 12% dispersant; and one must use a 43ml dose of the 50% accelerator solution to provide 86% accelerator. The approximate solids content column of Table A of Anderson merely identifies solids content of suitable components, but does not provide the ratio of each component of the composition of admixtures; this ratio is provided by Paragraph [0156].

Anderson discloses that the composition of admixture includes about 85% to about 95% accelerator. To the extent that the Examiner has equated a set accelerator with the presently claimed strength improvement additive, it is clear that the Anderson discloses at least 85% accelerator, while the range of strength improvement additive of the present claims is from 0.5 to 40%. Therefore, Anderson does not teach the use of a strength improving additive, or the range of polyhydroxylalkylamine

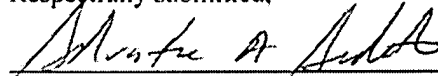
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included in the presently claimed admixture. Applicants, therefore, respectfully request withdrawal of the 35 U.S.C. §102(e) rejection over Anderson of claims 1-3, 5-9, 12-17, 19-23 and 26-32.

In view of the above amendments and remarks, Applicants respectfully request the 35 U.S.C. §102 (e) rejection be withdrawn, and that the Examiner issue a formal notice of allowance directed to claims 1, 3, 5-9, 12-17, 19-23 and 26-32. Should the Examiner have any questions regarding the remarks set forth herein, Applicants' undersigned attorney would welcome a telephone call.

Respectfully submitted,



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